83-419

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
WASHINGTON, D.C. 20226

OFFICE OF THE DIRECTOR

APR 07 1980

CC-29,163 FE:JBP

Lynn Battaglia
Assistant U.S. Attorney
101 W. Lomard Street
Baltimore, MD 21201

Dear Ms. Battaglia:

This refers to your inquiry as to the correctness of a letter from John G. Krogman, Acting Director, Bureau of ATF, to the Honorable S. I. Hayakawa, United States Senate, dated July 30, 1979. A copy of the letter is attached as Exhibit "B" to the Memorandum In Support of Petition for Writ of Error Coram Nobis in United States v. Richard Boulin, United States District Court for the District of Maryland, Criminal No. HM 77-0598.

You request our comments on statements made on page 3 of the letter to the effect that a Federal firearms licensee may lawfully dispose of firearms which are held by the licensee as a private collection, and not as business inventory, without entering the transactions in licensee records required to be kept.

On reconsideration, we have determined that these statements are not accurate and do not comport with the official position taken by ATF with respect to a firearms licensee's disposition of personal firearms. Rather, ATF has adhered to the decision in United States v. Scherer, 523 F.2d 371 (7th Cir. 1975), which held, among other things, that a licensee must record the disposition of such firearms in records required to be kept by Federal firearms laws. ATF's position on this matter is illustrated in ATF P 5300.15 (5/78), a copy of which is enclosed.

This publication is routinely forwarded to new licensees and was, shortly after its adoption, provided to all licensees. You will note that it contains a sample

LODGING

firearms acquisition and disposition record with sample entries showing how various firearms transactions should be recorded. Significantly, line 9 serves to inform the licensed dealer of the requirement to enter in his records the acquisition and disposition of his personal firearm and the manner in which it should be done.

At an appropriate time in the near future, we will again inform all Federal firearms licensees of the record-keeping requirements pertaining to the acquisition and disposition of their personal firearms, as well as seek to correct any inaccurate statements ATF has made about this subject matter.

Sincerely yours,

G. R. Dickerson

Director

Enclosure

Federal Firearms Licensee Information

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms

P 5300.15 (5/78)

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

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THE FOLLOWING INFORMATION RELATES TO DEALING IN FIREARMS AND AMMUNITION. THERE IS ALSO A SECTION RELATING TO THE COLLECTION OF CURIO AND RELIC FIREARMS AND AMMUNITION. THE APPROPRIATE REFERENCES ARE TITLE 27, CODE OF FEDERAL REGULATIONS, PART 178, AND ALL PAGE REFERENCES ARE TO ATF PUBLICATION 5300.5, YOUR GUIDE TO FIREARMS REGULATION.

THESE ARE GENERAL GUIDELINES, INTENDED FOR QUICK REFERENCE AND DO NOT COVER ALL SITUATIONS THAT YOU, AS A LICENSEE, MAY ENCOUNTER. CONSULT THE LAW AND REGULATIONS OR CONTACT ATF FOR MORE DETAILED INFORMATION. ATF FIELD AND REGIONAL OFFICES ARE LISTED IN ATF P 5300.5, BEGINNING WITH PAGE 119.

A FEDERAL FIREARMS LICENSE DOES NOT ALLOW YOU TO CONDUCT BUSINESS IN A MANNER CONTRARY TO STATE OR LOCAL FIREARMS LAWS, SUCH AS THOSE THAT REQUIRE LICENSES OR RESTRICT FIREARMS TRANSFERS AND RECEIPTS.

Your License

1. It is in effect until the expiration date shown on the license (178.49) (page 39).
2. It covers operations only at the location shown on the license (178.50) (page 39). See special requirements for collectors elsewhere in this publication.
3. You should examine your license carefully to make sure the information shown is correct.
4. If you find an error, send the license back to your regional regulatory administrator for correction (178.48) (page 39).
5. You must keep your license (ATF Form 8 Part I) posted and ready for inspection by ATF officers.
6. Use the copy of the license (Part II) to make purchases. You may make copies, but each copy must have your original signature (178.94, 178.95) (page 43).

Renewal of Your License

1. ATF will send a renewal application to you about 60 days before the expiration date shown on your license.
2. If you have not received your renewal application 30 days before the license expiration date, and you want to stay in business, please notify the ATF regional office serving your State (see ATF P 5300.5, pages 119-120).
3. If you want to renew your license, you must complete and send the application, with the fee attached, to your Internal Revenue Service Center before the license expiration date. If you file before the license expiration date, you may operate until you receive your new license. See questions and answers under the subheadings "Licensing" and "Conduct of Business – Licensees" in ATF P 5300.5 for more detailed information.

Records You Must Keep

Firearms

1. Keep a separate permanent record (see definition of "bound book," page 82) of all firearms received and disposed of. This includes firearms received in pawn, curios and relics, and firearms received for overnight (or longer) repair.
   a. Firearms are to be logged in when received and logged out as they are disposed of (178.125(c)) (page 52). This publication contains sample bound book entries showing some types of firearms transactions, including both acquisitions and dispositions.
   b. Keep these records permanently.
2. Prepare ATF Form 4473, Firearms Transaction Record, covering the transfer of each firearm to a nonlicensed person. Read the Form 4473 carefully as it is the most important record you will keep.
   a. These completed Forms 4473 must also be kept permanently, in addition to the permanent record described above.
   b. Forms 4473 may be kept alphabetically (by name of purchaser), chronologically (by date) of disposition, or numerically (by transaction serial number (178.124) (page 50).
   c. Use yellow Form 4473 (Part I) for over-the-counter sales; use green Form 4473 (Part II) for either contiguous (bordering) State sales or non-over-the-counter sales (178.124) (page 50).

Acquisition of Ammunition

3. Keep a separate record of all ammunition received.
   a. Invoices filed in an orderly manner are acceptable, if they are kept separate from other commercial records.
   b. Keep these records for 2 years.

Disposition of Ammunition

4. You do not have to keep a record of the disposition of shotgun ammunition, ammunition used only in rifles, or component parts of these types of ammunition.
5. You must, however, keep a separate, permanent record (see definition of "bound book," page 84) of the disposition of handgun ammunition or ammunition that is interchangeable between handguns and rifles, such as .22 caliber (178.125(c)) (page 51) (also page 91). This publication contains sample bound book entries showing several ammunition transactions.
   a. Invoices may not be used for this permanent record.
   b. Keep these records for 2 years.

Transfers Between Licensees

1. Generally, licensees may freely buy and sell firearms and ammunition among themselves.
   a. Licensees do not have to prepare Forms 4473 on transfers to other licensees.
   b. Transactions between licensees must be recorded in the bound book record.
   c. The licensee to receive the firearms or ammunition shall furnish a copy of his license (ATF Form 8 Part II, or copy) to the licensee selling or otherwise disposing of the firearms or ammunition, prior to making the transaction (178.94, 178.95) (page 43).
   d. Licensees may ship interstate to other licensees.
   e. As a firearms dealer, you may take orders for firearms and ammunition at any location, but THE ORDERS MUST BE FILLED ONLY AT YOUR LICENSED PREMISES (see questions and answers, page 83).
2. Your particular license may limit your activity. (See heading for LICENSED COLLECTORS in this publication and questions and answers on page 83).

Know Your Customer

1. Identify the buyer by name, age and residence address before delivering any firearm or ammunition (178.124, 178.125) (pages 50-52) (also page 1).

Age Requirements

2. Under Federal law, the minimum age for purchasers of firearms and ammunition may be either 18 or 21 years, depending on the item being purchased.
   a. You may not sell a handgun or handgun ammunition to persons under 21 years of age.
   b. You may not sell shotguns or rifles, or shotgun and rifle ammunition to persons under 18 years of age.
   c. You may sell ammunition that is interchangeable between rifles and handguns to a purchaser who is at least 18 years of age if you are satisfied that he or she will use the ammunition in a rifle (178.99, page 45, and questions and answers, page 83).

Residency Requirements for Nonlicensee Sales

1. If you sell or deliver a handgun to a nonlicensed person, that person must be a resident of the State in which your licensed premises is located (178.99) (page 45).
2. If you sell or deliver a rifle or shotgun to a nonlicensed person, that person must be:
   a. a resident of the State in which your business premises is located; or
   b. a resident of a contiguous (bordering) State, if:
      (1) the buyer's State has enacted legislation allowing such sale or delivery (pages 126 and 127);
      (2) the sale conforms to legal requirements in both States;
      (3) the appropriate law enforcement officer in the buyer's home State has been notified as required; and
      (4) the waiting period requirement has been satisfied (178.96-178.99) (pages 44 and 45).

Prohibited Sales

1. In addition to the requirements shown above, you may not lawfully sell or dispose of any firearm or ammunition to certain types of persons; e.g., convicted felons. See ATF F 4473, questions 8a through 8h.
2. If any of your customers would violate any State law or local ordinance that applies at the place where you sell or deliver, by purchasing or possessing any firearm or ammunition, then, under Federal law, you may not lawfully sell or deliver any firearms or ammunition to that customer (Federal law, (922(b)(2)) (page 5).

Lost or Stolen Firearms

If firearms are lost or stolen, you should immediately contact your local law enforcement authorities.

Report Multiple Handgun Sales

1. The delivery of more than one handgun to the same individual (nonlicensee) within 5 consecutive business days must be reported to ATF on ATF F 3310.4, Report of Multiple Sale or Other Disposition of Pistols and Revolvers, (178.126a, page 53; see also page 1).
2. The original of Form 3310.4 must be mailed to the ATF Criminal Enforcement office for your area at the end of the business day that the sale occurs. A list of these offices and their addresses appears on page 123.

Licensed Collectors

(See "Collectors," page 83 and "Operations by Federally Licensed Collectors," page 95)

1. You may buy curios and relics from any source (178.50) (page 39).
2. You may dispose of curios and relics to another licensee anywhere or to nonlicensed residents in your State (178.50) (page 39).
3. You must maintain the same records as other licensees.
4. Your collector's license entitles you to conduct transactions in curios and relics only. A licensed collector has the same status as a nonlicensee in any transactions involving firearms and ammunition other than curios and relics.

Change of Address

You must notify your regional regulatory administrator at least 10 days before moving your firearms or ammunition business to a new address (178.52) (page 40).

Sale of Business or Going Out of Business

1. Within 30 days after you sell or discontinue your firearms or ammunition business, you must give written notice of this change in status to your regional regulatory administrator (178.57) (page 40).
2. If you sell or discontinue your firearms or ammunition business and are succeeded by a new licensee, your firearm dealer records should be marked to show this fact and shall be delivered to the successor (178.127) (page 53).
3. You must deliver all of your firearms records to your ATF regional regulatory administrator within 30 days of going completely out of the firearms or ammunition business (178.127) (page 53).

Questions

If you should have any questions regarding Federal laws or regulations and are unable to locate the answers in ATF P 5300.5 (see page 79), please contact your nearest ATF field office listed on pages 120-125, or your ATF regional office listed on pages 119-120.

AN ATF OFFICER WILL EXAMINE YOUR BUSINESS OPERATIONS PERIODICALLY.

COMPLIANCE WITH FEDERAL LAW AND REGULATIONS IS IMPORTANT–VIOLATIONS CAN RESULT IN THE LOSS OF YOUR LICENSE OR OTHER SERIOUS CONSEQUENCES.

Sales of Firearms to Law Enforcement Officers

Section 925(a)(1) of the Gun Control Act exempts law enforcement agencies from the transportation, shipment, receipt, or importation controls of the Act when firearms are to be used for the official business of the agency.

If a law enforcement officer is issued a certification letter on the agency's letterhead signed by a person in authority within his agency stating that the officer will use the firearms in performance of his official duties, then that officer specified in the certification may purchase a firearm from you regardless of the State in which he resides or in which the agency is located. The seller is not required to prepare a Form 4473 covering such a sale, however, the transaction must be entered in the permanent record. The certification letter from the officer must be kept in your files.

The Bureau considers the following as persons having authority to make certifications that the law enforcement officer purchasing the firearms will use the firearms in performance of his official duties.

1. In a city or county police department, the director of public safety or the chief or commissioner of police.
2. In a sheriff's office, the sheriff.
3. In a State police or highway patrol department, the superintendent or the supervisor in charge of the office to which the State officer or employee is assigned.
4. In Federal law enforcement offices, the supervisor in charge of the office to which the Federal officer or employee is assigned.

The Bureau would also recognize someone signing on behalf of a person of authority provided there is a proper delegation of authority and overall responsibility has not changed in any way.

DEPARTMENT OF THE TREASURY – BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
DISPOSITION RECORD OF INTERCHANGEABLE AMMUNITION AND HANDGUN AMMUNITION

MUST BE RETAINED FOR 5 YEARS AFTER DATE OF LAST ENTRY ON PAGE

DATE 1976	MANUFACTURER	.22 CAL. RIM FIRE	OTHER: Center Fire Type of Cartridge	OTHER: No. of Rds.	PURCHASER: Name	PURCHASER: Address	PURCHASER: Date of Birth	IDENTIFICATION: Proof of age	IDENTIFICATION: Driver's License Number	IDENTIFICATION: Other Identification
12/1	WinchesTer	✓			Spencer Gatling	405 Wesley Drive Richards, Illinois	3/1/31		B100-0011-1010	
12/2	RemingTon		.25	3	Marlin Stevens	58 Sauer St. Bullard, Illinois	4/8/40	✓		
12/3	WinchesTer		.30-30	5	Guedes Reformado	44 Sharps Blvd Creedmoor, Illinois	6/7/41		C410-1000-0005	
12/4	Smith and Wetson		.30	4	Maynard Trounds	95 Peabody St. Beechardt, Illinois	12/4/58		D003-3000-0101	

For this entry, Mr. Trounds is 18 years old and the ammunition is intended for use in a rifle (178.125(c)).

SAMPLE COPY
FOR USE OF
COMMERCIAL PRINTERS

You may obtain a copy of this form, for reproduction by a commercial printer, from the ATF Distribution Center, 3800 S. Four Mile Run Drive, Arlington, Va. 22206.

Hand-ruled paper with the same column arrangement, same column headings, and the same language notations as this sample, may be used.

ATF F 5300.2 (11-73) COMMERCIAL SAMPLE

FIREARMS ACQUISITION AND

DESCRIPTION OF FIREARM					RECEIPT	
MANUFACTURER and/or IMPORTER	MODEL	SERIAL NUMBER	TYPE OF ACTION	CALIBER OR GAUGE	DATE	FROM WHOM RECEIVED (Name and Address or Name and License Number)
1) Ithaca	102 1004	6607138G	Pump	20	8/2/75	John's Fine Guns Inc FFL # 42-987
2) Smith & Wesson	10	M60512	Revolver	.38	8/4/75	Swap Shop FFL # 86-3498
3) Western Field	10504	G914G7	Pump	20	8/4/75	John's Fine Guns Inc. FFL # 42-987
4) Winchester	94	382906	Lever	.30-30	11/4/75	AL Greenfeather 928 Forrest Hill Oak, Ill. 60605
5) RemingTon	870	4932	Pump	16	6/19/76	Tom Problem 605 E. Colonial Pine Bluff, Ill 60651
6) RemingTon	540 X	312698V	single	.22	11/2/76	Joan Realator FFL # 91-3487
7) Browning	1200	38679	Auto	.45	8/24/76	John Doe 631 Pine st. Elkton, Ill. 60605
8) Western Field	10504	G914G7	Pump	20	11/24/76	Jim Michaels 829 Columbia Terrace Springfield, Ill. 60659
9) Smith & Wesson	34-1	M60562	Auto	.22	12/1/76	Brian Smith (owner) 811 Wilder Cambridge, Ill. 60721
10) RemingTon	870	4932	Pump	16	12/2/76	Fix it or Melt it Inc. FFL # 46-3988

Explanation of Acquisitions

Line

1 Shows purchase of a firearm from a licensed dealer – you must record their license number. In order for Brian to obtain this firearm, he had to submit a current copy of his FFL to John's Fine Guns (178.94). When Brian received the firearm, he entered it into this book immediately. (For variation see 178.125(f).)

4 Purchase of firearm from an unlicensed person.

5 Gun is brought in for repair. If firearm can be fixed and returned to owner on same business day, no entry need be made. However, if firearm cannot be returned that day, it must be entered as an acquisition even though it is not a purchase. Gunsmithing transactions such as this may be recorded in a separate bound book.

7 John Doe has brought in a gun for sale on consignment. Make entry on date of receipt.

8 Michaels originally purchased the gun on 11/2/76 (line 3). He does not like it and returns it on 11/24/76. The firearm must be reentered showing date of receipt and from whom received. (It was received from Michaels on 11/24/76.) The original entry on line 3 remains unchanged.

9 Brian Smith, owner of the licensed business, has a personal firearm he wants to sell. Enter firearm in book and show acquisition date as the date it was put up for sale.

10 Firearm sent to Fix It or Melt It Inc. for repair on 6/20/76 is returned to Smith's shop and reentered on 12/2/76.

Hand-ruled paper with the same column arrangement, same column headings, and the same language notations as the illustration above, may be used.

Line numbers are given for illustration purposes only.

DISPOSITION RECORD

	DISPOSITION		
	DATE	NAME	ADDRESS OR LICENSE NUMBER (If Licensee) OR FORM 4473 SERIAL NO. (If non-Licensee) [File Numerically]
1)	11/29/76	James Howse	Form 4473 #2
2)			
3)	11/2/76	Jim Michaels	Form 4473 #68
4)	9/1/76	Bill Bounce	Form 4473 #50
5)	6/20/76	Fix it or Melt it Inc.	FFL # 46-3988
6)	7/14/76	Brian Smith	Form 4473 #35
7)	7/1/77	John Doe	Form 4473 #36
8)	12/2/76	Stolen - Reported to	Police on 12/2/76
9)	12/12/76	Jake Jones, Metro Police	305 Wilkins Blvd. Atchison, Kansas 70519 See certification letter instead of F4473
10)	12/2/76	Tom Problem	605 East Colonial Pine Bluff, Ill. 60651

Explanation of Dispositions

Line

1 Sale to an unlicensed person. The buyer's name is inserted directly across from the firearm purchased. Brian's Sport Shop files Form 4473 numerically (see 178.124(b) for options) and lists the form number in place of the address. Number "2" is the serial number of the Form 4473 that Mr. House filled out.

2 This firearm has not been traded, sold, loaned, stolen or transferred out. It should be on hand and available for inspection.

4 Bounce borrows a gun. It is not a sale but it is a disposition. Form 4473 must be filled out. (See 178.97 for loans and rentals by clubs). When Bounce returns the gun, it must be shown as an acquisition.

5 Brian is unable to fix the firearm brought in by Mr. Problem and sends it to a gunsmith for repair. Gunsmiths must be licensed and Brian's Sport Shop must obtain a current certified copy of Fix It or Melt It Inc. license prior to delivery of the firearm.

6 Brian Smith, owner of the store, takes a firearm from inventory for his own personal firearm. Since this will be a personal firearm, Smith must fill out Form 4473 for himself. When this happens, it must be either removed from the business premises, or, if kept on the business premises, must be identified as not being part of his business inventory. (Such as by a tag reading "NOT FOR SALE.")

7 Gun brought in by John Doe for sale on consignment was not sold. Form 4473 must be filled out by John Doe when the gun is returned to him.

8 The firearm is stolen – show disposition of firearm as "stolen" and show date the theft was reported to the local authorities. If the police case number is available, please report it here.

9 Firearms were sold to out-of-State policeman for official use, as evidenced by certification letter. See instructions on sale to law enforcement officers.

10 Mr. Problem gets his repaired gun back. He does not need to fill out Form 4473. The gun was returned to the same person who brought the gun in for repair. If someone picked the gun up for Mr. Problem a Form 4473 would then have to be filled out by that person (178.124(a)).